



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

June 4, 2019

The Honorable Jerrold Nadler
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Nadler:

I write in response to your May 24, 2019 letter to the Attorney General and the Counsel to the President, as well as your May 10 letter to the Attorney General, concerning the April 18, 2019 subpoena ("Subpoena") to the Department of Justice ("Department") by the House Committee on the Judiciary ("Committee").

Your May 24, 2019 letter expresses "the Committee's willingness to engage in further negotiations to resolve this dispute," and purports to offer "to identify specific materials that if produced would be deemed to satisfy the subpoena" while also prioritizing requests for materials from the Department. As you know, your letter comes well after the Committee rejected good faith offers by the Department to accommodate the Committee's Subpoena in much the same manner. Instead of pursuing the Department's proposed framework for potential production, the Committee precipitously voted on May 8, 2019, to recommend that the House of Representatives hold the Attorney General in contempt of Congress. As we have previously communicated, that vote was premature and unnecessary.¹ The Department was disappointed by the Committee's abrupt termination of ongoing negotiations aimed at reaching a reasonable accommodation that respects both sides' legitimate interests regarding the materials sought. Further, the Department is disappointed by news reports indicating that Democratic leaders have scheduled a contempt vote in the House of Representatives for June 11, 2019.

Additionally, your letter contains multiple inaccuracies regarding the Subpoena, the interactions between the Department and the Committee to date, and the Department's proposal to establish a framework for potential production of documents to the Committee. The Department will be pleased to correct the record in separate correspondence to the Committee.

In your May 24, 2019 letter, the Committee appears to recognize that the Subpoena is unworkably overbroad and offers—for the first time—to narrow the Subpoena's scope to cover a much more limited set of documents. The Department believes that the Committee's new offer reflects a more reasonable request and could mitigate some of the legal barriers to disclosure that we have discussed. To that end, the Department is prepared to resume negotiations with the Committee regarding accommodation of its narrowed Subpoena, provided that the Committee

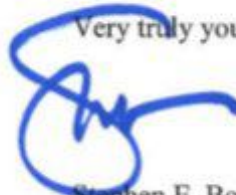
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takes reasonable steps to restore the *status quo ante* by mooted its May 8 vote and removing any threat of an imminent vote by the House of Representatives to hold the Attorney General in contempt. Indeed, given the Committee's offer to narrow the scope of its Subpoena, it would hardly make sense for the full House of Representatives to act upon the Committee's prior recommendation to hold the Attorney General in contempt for not complying with a Subpoena that even the Committee now appears to acknowledge was overbroad in seeking immediate disclosure of the entirety of the Special Counsel's investigative files.

As we have made clear from the outset, the Department remains mindful of its constitutional obligation and its desire to explore ways it can accommodate, to the extent possible, Congress's legitimate interests in materials relating to the Special Counsel's investigation, as the Department's recent dealings with your colleagues on the House Permanent Select Committee on Intelligence (HPSCI) demonstrate. As you know, the Department recently negotiated a mutually acceptable accommodation with HPSCI regarding a similar subpoena for materials relating to the Special Counsel's investigation. Accordingly, the Department has been able to produce documents for *in camera* review in a secure setting in response to a narrowed and more reasonable request. The only reason we were not able to engage in a similar accommodation with the Judiciary Committee is that you insisted on taking the unnecessary step of holding a contempt vote less than three weeks after issuing the Subpoena, at a time when negotiations were ongoing.

We look forward to your confirmation that the contempt resolution has been withdrawn and, following such confirmation, to returning to our efforts to accommodate the Committee. We would be happy to meet to discuss these matters further.

Very truly yours,



Stephen E. Boyd
Assistant Attorney General

cc: The Honorable Doug Collins
Ranking Member

ⁱ The Committee held its contempt vote only 19 days after issuing the subpoena. Traditionally, Congressional committees have only proceeded with contempt votes after lengthy periods of negotiations have failed to reach an accommodation. For example, the House Oversight and Government Reform Committee negotiated with the Department over the Operation Fast and Furious subpoena for months, and only voted to cite Attorney General Holder for contempt 252 days after issuing its subpoena. That same committee waited 325 days after an initial subpoena before voting to hold in contempt former Internal Revenue Service official Lois Lerner. Since 1975, committees and subcommittees have averaged 103 days between issuing a subpoena to an executive branch official and holding a contempt vote. By any measure, the Committee rushed its decision and bears responsibility for the termination of the accommodation process.